

FILED

NOT FOR PUBLICATION

FEB 21 2006

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

BILLY JOE PICKETT, aka Billy Joe
Long,

Plaintiff - Appellant,

v.

B. HARTUNG,

Defendant - Appellee.

No. 05-15406

D.C. No. CV-01-06250-OWW

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of California
Oliver W. Wanger, District Judge, Presiding

Submitted February 13, 2006^{**}

Before: FERNANDEZ, RYMER, and BYBEE, Circuit Judges.

Billy Joe Pickett, a California state prisoner, appeals pro se from the district court's judgment in favor of defendant in his 42 U.S.C. § 1983 action alleging violations of his Eighth Amendment rights. We have jurisdiction under 28 U.S.C.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

§ 1291. We review de novo the district court's grant of summary judgment, *Morrison v. Hall*, 261 F.3d 896, 900 (9th Cir. 2001), and review for abuse of discretion evidentiary rulings made in the context of summary judgment, *Fonseca v. Sysco Food Serv., Inc.*, 374 F.3d 840, 845 (9th Cir. 2004). We affirm.

The district court properly granted summary judgment on Pickett's Eighth Amendment claim because Pickett failed to raise a triable issue of fact as to whether the defendant was deliberately indifferent to his serious medical needs. *See Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir. 1989). Additionally, Pickett provided insufficient evidence that the defendant knew Pickett's cellmate posed a serious risk of harm to Pickett. *See Farmer v. Brennan*, 511 U.S. 825, 842 (1994).

The district court did not abuse its discretion by admitting defendant's evidentiary submissions after noting and considering Pickett's objections.

Pickett's remaining contentions are without merit.

AFFIRMED